

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN MACK COLE**, on April 3, 2001 at 3:30 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Royal Johnson, Vice Chairman (R)
Sen. Steve Doherty (D)
Sen. Alvin Ellis Jr. (R)
Sen. Mike Halligan (D)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Don Ryan (D)
Sen. Corey Stapleton (R)
Sen. Mike Taylor (R)
Sen. Tom Zook (R)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Marion Mood, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: HB 632
HB 646
HB 647

EXECUTIVE ACTION ON HB 632

CHAIRMAN MACK COLE called on **Jerome Anderson, PPL Montana**, to clarify some issues that had come up during the previous day's hearing. **Mr. Anderson** referred to a fax sent to the committee members by **Mr. Greg Stricker, President, MRI** in which he corrected **Mr. Anderson's** statement that approximately 80% of the power they had generated in the year 2000 was sold to MPC; he should have said the last 6 months instead of the entire year.

Todd Everts announced that there were four sets of amendments to HB 632; the first set, **EXHIBIT(ens75a01)**, #HB063204.ate, struck on page 11 the term "six years" and reverted it back to four years.

Motion/Vote: **SEN. HALLIGAN** moved that **AMENDMENT #063204.ATE BE ADOPTED.**

SEN. MIKE HALLIGAN assured the committee that this was not a substantive amendment and had been in other bills the committee had passed.

Motion/Vote: Motion carried 10-0.

Todd Everts introduced Amendment #HB063205, requested by **SEN. COREY STAPLETON**, **EXHIBIT(ens75a02)**.

Motion/Vote: **SEN. STAPLETON** moved that **AMENDMENT #HB63205.ATE BE ADOPTED.** Motion carried 10-0.

Todd Everts introduced Amendment #HB063206, requested by the sponsor, **REP. DOUG MOOD**, **EXHIBIT(ens75a03)**. He said amendments 1, 2, and 4 were technical amendments to correct a House amendment, defining what large customers are. Amendment #3 put back a portion of 69-8-210 which had been stricken; amendment #5 dealt with lifeline and interim rates.

Motion: **SEN. COLE** moved that **AMENDMENT #HB063206 BE ADOPTED.**

Discussion:

SEN. HALLIGAN asked why the rest of 69-8-210 was not needed if Subsection (3) was re-inserted without the (b) and (c) sections; since everyone wanted to extend the cost-based issue of the contract for the term of three years. **Todd Everts** stated it was a policy call on the sponsor's part. **SEN. HALLIGAN** addressed **SEN. ROYAL JOHNSON**, saying that he had been interested in keeping most of that statute in; why was it good policy now not to keep

the rest of that section in the code. **SEN. JOHNSON** wanted to have **Todd Everts** clarify an issue before answering the question, and asked **Mr. Everts** what effect this would have on the conditions and circumstances they were under. **Mr. Everts** explained that there were more amendments coming up which would put the full provisions back in. If it was left as is, and the transition period was extended, it would eliminate the option to purchase from the market, and the option for the distribution services provider to ensure they get their cost recovered. **SEN. JOHNSON** asked **Pat Corcoran** to explain the situation further. **Pat Corcoran, MPC**, explained that all of the original language in current law should be put back into HB 632. This would extend the cost-based contract to purchase electricity from the market place as per (a). The question then arose where the power would come from; MPC was currently working on a package of competitive bids to serve customers beginning July 1, 2002 which related to part (b), dealing with purchasing power from the market. The presumption was that this power would mainly come from PPL Montana, but MPC was also going through a bid process, and that was why he felt the original law was most appropriate. **SEN. JOHNSON** then referred to the contract MPC had with PPL Montana, and asked if they had addressed this problem as part of their contractual obligation in their decision to sell the assets. **Pat Corcoran** explained that the current buy-back contract lasted through July 1, 2002, and the contracts did not contain provisions beyond that date. **SEN. JOHNSON** repeated his question whether this had been a part of the negotiations. **Pat Corcoran** could not say since he had not been involved in the deliberations. **SEN. JOHNSON** then asked if he had seen the disclosure documents. **Pat Corcoran** did not recall a document which would allow him to answer that question. **SEN. JOHNSON** asserted that anyone purchasing or selling would have discussed that part of the contract since it was in the law; he agreed with **REP. MOOD's** assessment and felt changing the language now would not affect any opportunities. **SEN. HALLIGAN** thought it did not, but wanted additional comments from PPL Montana. **Dennis Lopach, PPL Montana**, said he had discussed the affiliate supplier language with legal counsel **Greg Petesch**, whose impression was that it might be useful language to have in case there was litigation because it strengthened the PSC's position. He asserted that NorthWestern's interest was in subsection (c) of that section.

SEN. STEVE DOHERTY asked **Mike Uda** to comment on this issue. **Mike Uda** agreed with **Mr. Lopach's** assessment of that section's purpose, namely that removing the first section could jeopardize the existing buy-back agreement between PPL Montana and MPC; he felt the rest of that section was not necessary because until the

final transition order was issued, the commission retained jurisdiction over the price, no matter how the default supplier went about obtaining the supply. He stated he understood why NorthWestern did not want any exposure if they were to follow through on their commitment to buy MPC's transmission and distribution system, but felt strongly that there was a responsibility to rate payers.

Vote: Motion **carried 11-0.**

Todd Everts introduced Amendment #HB063207.ate, **EXHIBIT (ens75a04)**, and **SEN. DON RYAN** stated that these were prepared at the request of North Western; he reiterated that #1 was discussed earlier, and subsection (a) had been voted back in. He explained that #2 defined generation as facilities located within Montana, and #3 dealt with cost recovery with regards to the lifelines rates.

Motion: **SEN. RYAN** moved that **AMENDMENT #HB063207 BE ADOPTED.**

Discussion:

SEN. JOHNSON asked **Dennis Lopach, North Western Corp.**, to explain the section on lifeline rates since he had drafted the amendment.

Dennis Lopach stated that his company's primary interest was in recovering the cost of purchasing the power to serve Montana customers. He was afraid that the concept of lifeline rates raised the possibility that Montana would find itself in the same type of situation as California where the distributors had gotten stuck for the high market cost, unable to recover those costs through customer charges. He charged that while there is no such thing as a free lunch, there might not be a public utility able to either acquire power or maintain the transmission and distribution system. Referring to amendment #2, he wanted the regulation of rates to be for generating entities and not for generation.

SEN. JOHNSON felt that the company delivering power should be able to recover the cost, and that there should be a cost-based contract. Since SB 390 did provide cost recovery, he was opposed to this amendment.

SEN. TOM ZOOK wondered how this amendment fit with the amendments the committee had just voted on. **Dennis Lopach** explained that the previous amendment dealt with re-inserting language under 1(a) which was existing law under SB 390; this language was stricken in HB 632, and they wanted to add amendments #2 and #3.

SEN. ZOOK felt that the default supplier should be protected, and

since protection was absent in the previously passed amendments, he would favor this one.

SEN. DOHERTY asked for **Mike Uda's** comments on these amendments. **Mike Uda** claimed that the fundamental question was whether NorthWestern, should it decide to buy MPC's transmission and distribution facilities, be entitled to absolute cost recovery no matter what, and he was adamant that nobody had that kind of guarantee, not the people who testified in favor of HB 632 or anyone else. The most important change to HB 632 came in form of #3 of Amendment #HB063207, dealing with the lifeline rate. He charged that if this was adopted, the lifeline rates would not work but become deadline rates. The idea was to get people back to work and paying taxes, and these amendments did not serve this goal. **SEN. DOHERTY** wondered why it would not work. **Mike Uda** read amendment #3 of HB063207, and explained that if the large customers came back in under a lifeline rate, those costs would have to be recovered immediately, and this was not possible.

{Tape : 1; Side : B}

He then pointed to 3(b) and explained that if these lifeline rates were extended, it would not be North Western but some other source of funding yet to be specified, and he assured the committee that the lifeline rates would not work if #3 was adopted.

SEN. DOHERTY wanted clarification with regards to the "other source of funding". **Mr. Lopach** explained that he had contemplated some kind of state financing for the industrials instead of them being subsidized by the default supplier. **SEN. DOHERTY** wanted to be sure he was talking about state financing, and **Mr. Lopach** confirmed this, adding that the basic thrust of the amendment was that neither MPC nor NorthWestern could be the bank for the industrial customers.

SEN. ZOOK suggested that amendment #3 be separated out. **CHAIRMAN COLE** ascertained that he wanted to vote on just #1 and #2.

Motion/Vote: **SEN. JOHNSON moved** to separate all three of the amendments as in #HB63207.ate.

Discussion: (on item #1)

SEN. HALLIGAN wanted assurance that with regards to full cost recovery, "cost" was the difference between a cost-based approach and a market figure. **Mike Uda** stated he had reservations about the full cost recovery issue because there was some question about the prudence of entering into a two-year contract for service to default supply, knowing that current law allowed the

PSC to extend the transition period by two years. If the PSC deemed a decision by the power company to be not prudent, then full cost recovery was not guaranteed under present law. **SEN. HALLIGAN** asked if they did enter into a contract that was based on market conditions, could there not be full cost recovery. **Mike Uda** agreed that the PSC had the authority to make that determination, but he speculated that this was an attempt to ensure that the commission could not make the determination that the distribution services provider did not have some responsibility for current prices. He added that the commission was fully expected to make this kind of investigation.

SEN. TAYLOR requested that full cost recovery be explained by NorthWestern Corp., and **Mr. Lopach** stated that rates are split between transmission distribution and supply, with transmission distribution being the regulated portion. At issue here was the supply cost and in this regard, full cost recovery meant that when the default supplier purchased power, the cost of those contracts were recovered from rate payers. **SEN. TAYLOR** asked if profit was included in the "cost", which **Mr. Lopach** denied. **SEN. ZOOK** pointed to the situation in other states, charging that we would not force any company to provide service to Montana without backing them, and these amendments offered that commitment.

SEN. JOHNSON asked how item #1 correlated to **REP. MOOD'S** item #3 which read differently in the original bill. **Todd Everts** explained that item #3 was the same as item #4 a of Amendment #HB63207.ate and he would make sure it worked technically with (b) and (c).

Vote: Motion on item #1 **carried 8-3 with Doherty, Halligan, and Stapleton voting no.**

Motion: **SEN. COLE** moved that **ITEM #2 BE ADOPTED.**

Discussion:

SEN. DOHERTY admitted that the change in language was subtle with regards to who was in and who was out, but wanted the difference explained. **Mr. Lopach** answered that the intent of HB 632 was to reinforce the PSC's initiative to set rates for PPL Montana, and item #2 clarified that MPC and NorthWestern were out, and PPL was in.

SEN. JOHNSON asked how this affected other generators in the state, whether they sold power in-state or not. **Mr. Lopach** believed that the PSC could possibly reach to other entities as well. **SEN. JOHNSON** wondered if this could reach to the other

owners of Colstrip 4. **Mr. Lopach** thought that it could but did not think it was their intent.

SEN. RYAN asked, in the interest of fairness, why it was that one company was in, and one was out. **Mr. Lopach** replied it tried to match the language with what the PSC intended to do with regards to setting rates for PPL Montana.

SEN. RYAN was interested in the PSC's assessment of this amendment. **David Hoffman, PSC**, replied he had not studied it and was not sure where it would fit into the existing statutes. He did caution the committee that the PSC had taken a position on existing statutory language, and to the extent that this might modify existing language, they would be cautious in endorsing it.

SEN. RYAN turned to PPL Montana for their opinion. **Jerome Anderson** did not think that this reached to other generators in the state; it addressed the customer who had filed a transition plan, and that would be PPL Montana.

SEN. STAPLETON inquired if **SEN. RYAN** felt strongly about these amendments, and **SEN. RYAN** answered that this was a significant forward step, and the members had the obligation to look at all of the information to enable them to make informed decisions and avoid unintended consequences. **SEN. STAPLETON** expressed reluctance to support any of the these amendments because he was not sure where they came from, and what their consequences were.

Vote: Motion to adopt ITEM #2 failed 0-11.

Motion: **SEN. COLE** moved that ITEM #3 BE ADOPTED.

Discussion:

SEN. RYAN reiterated that HB 632 dealt with lifeline rates and the PSC's assertion of their authority which was likely to be challenged in court. If the commission was not successful, he feared we would create a California situation with the supplier having to buy high and sell low.

SEN. ZOOK agreed with the language in **REP. MOOD'S** amendment because it enhanced the commission's authority.

SEN. HALLIGAN repeated that item #3 made sure that the default supplier could recover all of their cost which would include their buying high and selling low; he wanted to be sure that item #1 covered that issue, and there would be no need for item #3. He asked **SEN. RYAN** who deferred that question to **Mr. Lopach**.

Mr. Lopach commented that MPC and NorthWestern both have a problem with the lifeline rate concept because of the specific rate making. Even though the two companies will get their money back eventually, and with interest, they do have to come up with it to subsidize the industrial customers in the short term.

SEN. HALLIGAN asked **Mr. Uda** to respond to this particular issue. **Mike Uda** felt that item #1 did take care of the cost recovery issue subject to the commissions conditions with regards to the pay back terms, and there was no need for #3.

Vote: Motion ON ITEM #3 failed 1-10 with Ryan voting aye.

Motion: SEN. ELLIS moved that HB 632 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. RYAN wondered how the PSC felt about the provision in the title that dealt with immediately adjusting rates upward, in the public's best interest. **David Hoffman, PSC** replied that the commission had not yet taken a position on this bill. They had some concerns with the time constraints, saying a seven day time period was short but that they would do their best if so directed by the legislature.

SEN. JOHNSON asked **Bob Nelson** for his comments on the bill. **Bob Nelson, MT Consumer Council**, had not yet reviewed the amendments and could only speak to the bill which he felt was primarily meant to reassert the PSC's authority in setting rates for generation. He added that caution should be exercised so as not to jeopardize the distribution services provider's ability to provide that service.

{Tape : 2; Side : A}

SEN. RYAN referred to the provision that within seven days after passage of the bill, just and reasonable rates had to be established as per page 12, line 5, and asked if a rate case should be commenced now. **David Hoffman** first addressed a previous question, namely that of the commission's adjusting of rates upward, and explained that this was nothing more than a rollback of the rate moratorium; the PSC had taken the position that this would be in the best interest of the consumer by allowing them the flexibility to roll back rates before the end of the moratorium. He added that this was something the PSC had asked the legislature for. **SEN. RYAN** alluded to the promise from the governor's office that rates would not be raised before July 1, 2002 and asked how this bill compared to that promise. **David Hoffman** replied that it did not; HB 632 gave the commission the flexibility in case the need arose to provide a ramp prior to that date.

SEN. DOHERTY wondered which of the customers this rate increase applied to. **David Hoffman** informed him that under the commission's assertion of authority under existing statute, it would apply to the small customers under SB 390; if the additional flexibility were granted, it could also apply to the large customers brought back into the default supply. **SEN. DOHERTY** repeated his question, if this concerned all classes of customers or only the large industrials addressed in HB 632. **David Hoffman** assumed it would include the small customer contained in the existing language in SB 390; this was not modified in HB 632.

SEN. DOHERTY then referred to the irrigators who he believed were not covered under HB 632, and wanted a clear answer with regards to their use quantity. **Mike Uda** believed that no irrigator in this state consumed more than 1,000 kilowatts annually, and he did not think they would qualify, partly because of their seasonal consumption.

SEN. BEA MCCARTHY referred to the conflicting statements with regards to the effective dates between Sections (6) and (7, one saying retro-active and the other upon passage and approval. **Todd Everts** explained that the retro-activity attached to the tax break only.

SEN. STAPLETON inquired about the price tag to PPL Montana were this bill to pass as amended. **Jerome Anderson** replied that it was difficult to estimate as long as the rates to be established by the PSC were not known; he did take the position, though, that they felt they were not subject to PSC regulation, and therefore, the initial price tag to PPL Montana would be the cost of litigation which he feared could be in the six figures. If the litigation was successful and the PSC was enjoined from regulating PPL Montana, that facet of the price tag would be removed. If the courts upheld the PSC's assertion of authority, and it was determined later that they were wrongfully regulated, there would be a damage action against the state of Montana, and that would be substantial. Beyond that, the price tag would be the difference between the rate established by the PSC and that which PPL Montana obtained for the power if sold on the market.

Vote: Motion that **HB 632 BE CONCURRED IN AS AMENDED** carried 6-5 with **Halligan, Johnson, McCarthy, Ryan, and Stapleton** voting no, on a roll call vote. **PRESIDENT TOM BECK** agreed to carry the bill on the senate floor.

EXECUTIVE ACTION ON HB 646

Todd Everts explained that the amendment moved the average megawatts for an eligible generation facility from 3 to 20 megawatts. **EXHIBIT (ens75a05)**

Motion/Vote: SEN. COLE moved that **AMENDMENT #HB 064603. ATE BE ADOPTED. Motion carried 11-0.**

Motion: SEN. COLE moved that **HB 646 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. HALLIGAN asked how this bill differed from **CHAIRMAN COLE's** bill or if they were identical. **CHAIRMAN COLE** stated that there were some differences, and **SEN. HALLIGAN** agreed to move HB 646 forward as long as the goal was to meld them together in a conference committee.

SEN. TAYLOR referred to the local impact fee of .5% and asked how it would be administered, especially if two counties were involved, and in light of the fact that there were several bills dealing with this issue. **CHAIRMAN COLE** assumed that these bills would be coordinated and those questions answered in committee.

Vote: Motion ON HB 646 as amended carried 10-1 with Johnson voting no.

EXECUTIVE ACTION ON HB 647

CHAIRMAN COLE announced that there was one technical amendment to HB 647. **EXHIBIT (ens75a06)**

Motion: SEN. ZOOK moved that **HB 647 BE INDEFINITELY POSTPONED.**

Discussion:

SEN. HALLIGAN thought that the definition of "affiliate supplier" was worthwhile keeping. **SEN. ZOOK** pointed to page 3, section (2) where it mentions the distribution services provider successor, and he felt this could be damaging to any action potentially taken by the PSC. **SEN. HALLIGAN** asked for clarification from the PSC. **Mr. Hoffman** made it clear that the PSC had statutory authority of rate regulation through the transition period and did not rely on subsection (3) of section 210 that contained the affiliate supply language. He pointed out that he was not an attorney for the PSC even though he was a lawyer, and admitted

the commission was nervous about "affiliate supply" being redefined to assist the PSC's legal position on rate regulation.

SEN. HALLIGAN wondered, since SB 243 was dead and his own bill was tabled, what other bills there were dealing with the transition period because he felt strongly about having some tool allowing the PSC's jurisdiction to be extended. **Todd Everts** assured him that there were several bills left in the mix that would allow that to happen.

SEN. ELLIS concurred with **SEN. ZOOK** in not wanting to adopt this bill.

Vote: Motion **ON HB 647** carried 10-1 with Doherty voting no.

ADJOURNMENT

Adjournment: 4:55 P.M.

SEN. MACK COLE, Chairman

MARION MOOD, Secretary

MC/MM

EXHIBIT (ens75aad)